

In the Matter of Merchant Mariner's Document No. Z-618435-D2 and all other Seaman Documents

Issued to: CECIL K. REDMAN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1165

CECIL K. REDMAN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 16 September 1959, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an ordinary seaman on the United States SS AFRICAN MOON under authority of the document above described, on or about 9 June 1959, Appellant wrongfully had marijuana in his possession.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and specification. Evidence was introduced by both parties. When Appellant testified, he repeatedly denied knowing that the envelope in his possession contained marijuana.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant.

FINDINGS OF FACT

On 9 June 1959, Appellant was serving as an ordinary seaman on the United States SS AFRICAN MOON and acting under authority of his Merchant's Document No. Z-618435-D2 while the ship was in the port of Durban, Union of South Africa. On this date, a native girl with whom Appellant was riding in a taxicab handed him an envelope before they were stopped and searched by a policeman Appellant put the envelope in one of his pockets where it was found when he was searched. The envelope contained a small, undetermined quantity of marijuana, otherwise known as "dagga" in South Africa. Appellant was arrested and fined four pounds. He stated that he would take the responsibility in order to keep the girl out of trouble.

Appellant's prior record consists of an admonition in 1948.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant innocently accepted the envelope without having any knowledge as to its contents. There is no evidence that Appellant had any prior experience with marijuana. There is no substantial evidence that the substance was, in fact, marijuana. The Examiner stated he believed Appellant was the innocent victim of his own act.

The evidence is not substantial because it is not such as to justify a reasonable man to draw the inference, as a matter of conviction rather than mere suspicion, that Appellant was guilty as alleged.

Wherefore, Appellant prays that the Commandant will reverse the order and reinstate Appellant's document.

APPEARANCE: Irving F. Lax, Esquire, of New York City, of counsel.

OPINION

I do not agree with the contentions that the record does not contain sufficient evidence of the nature of the substance found or Appellant's wrongful possession of it.

Appellant was arrested after the policeman recognized the substance as dagga or marijuana. Appellant admitted this when he paid the fine although stating that he did this to protect the native girl.

Whether Appellant's possession was wrongful depends upon whether there was an un rebutted prima facie case made out against him by the presumption of fact of conscious and knowing possession of marijuana arising from the proof of physical possession of it. Prior decisions of the Commandant have indicated that such a prima facie case may be overcome if the Examiner accepts as true the testimony of the Appellant that he did not have any knowledge of the actual physical possession of the substance or that he did not know the nature of the substance admittedly known to be in his possession. Commandant's Appeal Decisions Nos. 810, 827, 1081. The present case falls in the latter category because Appellant admits that he knowingly had possession of the envelope which contained the marijuana.

The crux of this case is whether Appellant knew what was in the envelope. Hence, the Examiner should have made a specific finding as to whether he believed Appellant's testimony that he did not know what was in the envelope when the girl handed it to him. See Commandant's Appeal Decision No. 512. As contended on appeal, the Examiner stated, at the hearing, that he believed Appellant was "the innocent victim of his own act" (R. 46); and stated, in his decision, that he believed Appellant gave "substantially a truthful account of what took place" and "became the victim of his own guilelessness." On the other hand, the Examiner reached the conclusion that the possession was wrongful based on the above referred to prima facie presumption of knowledge as to the nature of the substance, which presumption was justified by the proof of actual physical possession of the

marijuana. Hence, the status of Appellant's denial of knowledge, which would constitute substantial evidence if accepted by the Examiner, cannot be determined.

As a result of this inconsistency, the finding that Appellant was guilty is set aside and the case will be remanded to the same Examiner for revision of his decision, based on the present record, to include a specific finding as to Appellant's credibility on this particular point. This is the function of the Examiner who heard and observed Appellant when he testified at the hearing.

ORDER

The order of the Examiner dated at New York, New York, on 16 September 1959, is VACATED. The record is REMANDED for further proceedings not inconsistent with this decision.

J A Hirshfield
Rear Admiral, U. S. Coast Guard
Acting Commandant

Dated at Washington, D. C., this 4th day of May 1960.